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ATTORNEYS AT LAW

April 13, 2007

Ex Parte – Via Electronic Filing

Commissioner Deborah Taylor Tate
Federal Chair, Federal-State Joint Board on Universal Service
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, DC 20554

Commissioner Ray Baum
State Chair, Federal-State Joint Board on Universal Service
Oregon Public Utility Commission
550 Capitol Street, N.E., Suite 215
P.O. Box 2148
Salem, Oregon 97308

Re: *Federal-State Joint Board on Universal Service, CC Docket No. 96-45; High-Cost
Universal Service Support, WC Docket No. 05-337*

Dear Commissioner Tate and Commissioner Baum,

General Communication Inc. (GCI) hereby responds to recent trade press reports that the Joint Board is considering adopting a cap on distributions to rural CETCs under the High Cost Fund. These reports suggest that such a cap would apply to all CETCs, including wireline CETCs. GCI has previously outlined why such a competitor-specific cap, even limited to wireless CETCs, would be bad policy, harm Alaska, and deepen and solidify the divide between communications “haves” and “have-nots” in rural America.¹ We write now to emphasize that there is absolutely no basis for including wireline CETCs within such a proposed cap if rural wireline ILEC ETCs are not also included within the cap.

The facts are plain: there is absolutely no evidence that wireline CETCs are contributing to any significant growth in the High Cost Fund. The principal “offense” by wireless CETCs that proponents use to justify a CETC cap is the large increase in support to wireless CETCs, which in 2006 was over \$300 million higher than 2005 support, according to USAC data. There is no comparable growth occurring in wireline CETC support. In 2006, USAC data shows that, in total, wireline ETCs received less than \$20 million in High Cost Fund

¹ See Letter of Tina M. Pidgeon to Comm. Deborah Taylor Tate and Commissioner Ray Baum, dated April 3, 2007.

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support.² Wireline CETC support is just 0.45% of the High Cost Fund, and had grown by only approximately \$3.5 million over 2005 wireline CETC support.³

Moreover, when a customer takes GCI service, it generally does not also subscribe to the local service of the competing ILEC. In other words, wireline CETCs compete head-to-head with the ILEC wireline ETC services that are complete substitutes for the ILEC's services, and are not merely complementary services to the ILEC's. Thus, the support provided to wireline CETCs would not cause the fund to increase at all if the current USF system did not continue to provide support to the wireline ILEC ETC, even when the wireline ILEC ETC is no longer serving the customer.

Thus, there is no basis at all for capping or limiting support to wireline CETCs in order to curb High Cost Fund growth, as wireline CETCs are not causing fund growth. To the extent growth due to the duplicate support paid to the wireline ILEC ETC when the wireline CETC provides universal service is a problem, the Joint Board could address that directly, rather than instituting even an "interim" cap on wireline CETCs that does not also apply to wireline ILEC ETCs. Indeed, in 1999, the Rural Task Force recommended freezing per line support for both the ILEC and the CETC upon the entry of a CETC and thereafter distributing support on a per line basis only. Doing so would prevent the amount of High Cost Fund support to a particular service area from increasing simply because the ILEC loses customers to a wireline CETC (i.e., the CETC "captures" the ILEC's customer).

Subjecting a wireline CETC to a cap that ensures that it will receive less support than the wireline ILEC CETC for serving the same customer in the same location with the same services makes no sense. It is the antithesis of a competitively neutral system, and would, in fact, be anticompetitive. As the Commission previously recognized:

A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount

² In its chart entitled, "High Cost Program – Support Distribution by Wireline & Wireless ETCs, 1998 through 4Q2006," which is posted on the USAC website at http://www.usac.org/_res/documents/about/pdf/fund-facts/HC%20Wireline-Wireless%20Distribution%20012207.pdf, USAC reports that wireline CETCs received \$55.4 million in High Cost Fund support in 2006, distributed to 104 wireline CETCs. However, GCI requested and obtained the underlying data from USAC. Upon investigation, several entities that USAC had identified as wireline CETCs were actually wireless CETCs, with the two largest being ACS Wireless and MTA Wireless, both of which operate in Alaska. When those carriers were removed from the wireline CETC totals, the total amount of wireline CETC High Cost Fund support fell to \$19.0 million for 2006, and was distributed to 90 wireline CETCs.

³ As described in n. 2, above, this total corrects for the misidentification by USAC of some wireless CETCs as wireline CETCs.

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equivalent to the amount of the support provided to ILECs that was not available to their competitors.⁴

The same is true with respect to federal USF. The supposed “crisis” of increasing high cost support does not justify repudiating the principle of competitive neutrality between wireline CETCs and wireline ILEC ETCs when the amount of wireline CETC funding is so small.

Moreover, as the Alaska markets show, a cap that reduces wireline CETC support below the wireline ILEC ETC’s per line support based on growth in wireless CETC subscribers creates irrational and anticompetitive results, particularly when the ILEC has an affiliated wireless CETC in the same study area. ILECs have an affiliated wireless CETC providing service in nine of the twelve Alaska study areas with CETCs, and in two areas, the ILEC affiliated wireless CETC is the only CETC. In these markets, under an all-CETC cap, as the ILEC-affiliated wireless CETCs, along with any other wireless CETCs, increase their subscribers, the amount of support that GCI receives when competing directly with the wireline ILEC ETC for wireline service will fall, solely because the number of wireless subscribers increased. This is a wholly-irrational result, which can only be arbitrary and capricious.

Accordingly, there is no basis for imposing a USF cap on wireline CETCs as distinguished from wireline ILEC ETCs. Such a cap would be unreasonably discriminatory, would violate principles of competitive neutrality, and would lead to less innovation and choice for consumers. Whatever the source of the high cost fund “problem,” it is not the wireline CETCs.

Sincerely,

/s/

John T. Nakahata
Counsel to General Communication Inc.

cc: All Members of the Federal-State Joint Board on Universal Service

⁴ *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, Memorandum Opinion and Order, 15 FCC Rcd 16227, 16231 (¶ 8) (2000).